72-239

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 72-239

HARRIOTT H. CHILDS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PHILIP J. HIRSCHKOP,
110 N. Royal Street,
Alexandria, Virginia 22313,

ROBERT T. HALL,
10560 Main Street,
Fairfax, Virginia 22030,

Counsel for Petitioner.

TENNESSEE LAW PRINTERS, P. O. Box 277, Knoxville, Tennessee, Phone 525-4202

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

NO. _____

HARRIOTT H. CHILDS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Harriott Childs, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered on July 13, 1972, affirming a judgment of the United States District Court for the Eastern District of Virginia, finding the petitioner guilty of possession of marijuana with the intent to distribute it. The District Court judgment was entered on the 9th day of June, 1971.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is included herein as Appendix A to this Petition.

JURISDICTION

The United States District Court for the Eastern District of Virginia entered a final judgment against the petitioner on the 9th day of June, 1971; the United States Court of Appeals for the Fourth Circuit entered a final judgment against the petitioner on July 13, 1972.

QUESTION PRESENTED

Does the Due Process Clause of the Fifth Amendment to the Constitution of the United States require that a conviction of your petitioner under the Assimilative Crimes Act be reversed when the conviction is based upon a provision of Virginia State Law which authorizes a conviction for possession ***with intent to distribute*** a controlled drug based solely on evidence of the quantity of the controlled drug possessed by your petitioner.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fifth Amendment to the Constitution of the United States as set forth below:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be

twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATUTORY PROVISIONS INVOLVED

The pertinent statutory provisions are Section 54-524.-101 (a) of the 1950 Code of Virginia, as amended, which provides:

"Except as authorized by this chapter, it shall be unlawful for any person knowingly or intentionally:

(1) To distribute, or to possess with intent to distribute, a controlled drug;
(2) To manufacture a controlled drug.

A conviction for a violation of this §54-524.101 (a) may be based solely upon evidence as to the quantity of any controlled drug or drugs unlawfully possessed."

and Section 54-524.101 (c) of the 1950 Code of Virginia, as amended, which in pertinent part provides:

"It is unlawful for any person knowingly or intentionally to possess a controlled drug * * *. Any person convicted of a violation of this subsection with respect to the controlled drug marijuana shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars or shall be confined in jail not exceeding twelve months, or both."

STATEMENT

How Federal Question Is Presented

The Federal question sought to be reviewed was raised in the motion for judgment of acquittal made by the petitioner in the United States District Court for the Eastern District of Virginia and formed the basis for the appeal to the United States Court of Appeals for the Fourth Circuit.

Statement of Facts

Petitioner was indicted under the Assimilative Crimes Act, Title 18 United States Code, Section 13 for a violation of Section 54-524.101 of the 1950 Code of Virginia, as amended June 26, 1970. Childs was convicted by a jury in the United States District Court for the Eastern District of Virginia (Oren R. Lewis, J.), of possessing 30 pounds of marijuana with intent to distribute. On June 9, 1971, she was sentenced to imprisonment for three years; thirty months of which was suspended.

On January 30, 1971, a trunk containing 30 pounds of marijuana was received for shipment at the American Air Lines Air Freight office at Los Angeles International Airport. The Air Freight supervisor's attention was attracted to the trunk, so he had the trunk opened. Inside, under a layer of mothballs, were 16 marijuana bricks (Tr. 30-35).*

The Federal Bureau of Narcotics and Dangerous Drugs was contacted, and an agent went to the airport to arrange for the trunk to be shipped to the addressee, "Pamela Feldman" in Washington, D. C. (Tr. 44).

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* References in the form of "Tr." are to the stenographic transcript of the trial.

The BNDD in Washington, D. C. was notified and on January 31, 1970, BNDD agents went to National Airport to await the arrival of the trunk and its claimant. At approximately 12:05 p.m., Childs entered the American Air Freight office and presented the clerk with a claim bill (Tr. 54, 63). She then directed an attendant to put the trunk on the rear seat of her car. After he did this, she signed "Pamela Feldman" on the receipt (Tr. 57). The agents then came forward to arrest her and she again identified herself as Pam Feldman (Tr. 176).

The petitioner testified she was duped by a friend into going to the airport to pick up the trunk. She did not know what was in the trunk, and she only identified herself as Pamela Feldman to expedite matters.

REASONS FOR GRANTING THE WRIT

Petitioner makes no claim that the statute making possession with intent to distribute a controlled drug unlawful is invalid. Petitioner does claim, however, that the further provision authorizing a conviction of your petitioner for possession with intent to distribute a controlled drug based solely on the quantity of the drug possessed violates the Due Process Clause of the Fifth Amendment.

The Drug Control Act (1970, Chapter 650) adopted by the State of Virginia and effective June 26, 1970, provided, inter alia, as codified in Section 54-524.101(a), that it was unlawful for any person knowingly or intentionally to manufacture, distribute or "to possess with intent to distribute, a controlled drug." Marijuana was defined elsewhere in the Act as such a drug.

The Virginia General Assembly further provided that "a conviction for a violation of this Section 54-524.101(a)

may be based solely upon evidence as to the quantity of any controlled drug or drugs unlawfully possessed."

Your petitioner was prosecuted under the Assimilative Crimes Act for Violation of this Section 54-524.101. See the indictment which is included as Appendix B herein.

No evidence was offered at the trial of any efforts on the petitioner's part to distribute the marijuana, only that she received that quantity at Washington National Airport. The Court instructed the jury under the provisions of Section 54-524.101 (a) that they could, if they found the petitioner knowingly and intentionally possessed the marijuana, return a conviction against her for possession with the specific intent to distribute the marijuana, based solely on evidence as to the quantity of the controlled drug she possessed. See the Instructions, Appendix C.

Your petitioner argues that this provision of Virginia Law violates the Due Process Clause of the Fifth Amendment of the Constitution of the United States.

The provision is vague and ambigious, it appears to create an irrational presumption and otherwise violates concepts of due process and fundamental fairness.

What does the expression, authorizing a conviction "solely upon evidence as the quantity" of drug possessed, mean? What is its intent and function? Is it a rule of evidence? Does it raise an inference? Does it raise a presumption? Does it create a new substantive crime—possession of "X" quantity—with greater penalties than simple possession?

What does the expression "as to quantity" mean? Whatever it is, it authorizes the fact finder to arbitrarily seize

upon a single fact "quantity", and return a conviction for manufacture, distribution or possession with intent to distribute.

> "It is elementary that an act creating a statutory offense, to be valid, must specify with reasonable certainty and definiteness the conduct which is commanded or prohibited, that is, what must be done or avoided, so that a person of ordinary intelligence may know what is thereby required of him.
>
> "The enactment should define the acts to be done or not to be done which constitute such offense with such certainty that a person may determine whether or not he has violated the law at the time he does or fails to do the act." *Caldwell v. Commonwealth*, 198 Va. 454, 94 S. E. 2d. 537.

Vague and imprecise drafting furnishes a convenient tool for "harsh and discriminatory enforcement by prosecuting officials against particular groups deemed to merit their displeasure." *Thornhill v. Alabama*, 310 U.S. 88, 97-98 (1940). The legality of the Section "is to be tested *not* by what has been done under it, but by what *may* be its authority, be done." *Assaid v. Roanoke*, 179 Va. 47, 18 S. E. 2d. 287, 288. And when a statute fails to establish reasonable and discernible standards for its application "it offers the opportunity for arbitrary action and discrimination," regardless of whether it has been heretofore arbitrarily or discriminatorily applied. *Andrews v. Board of Supervisors of Loudon County*, 200 Va. 637, 107 S. E. 2d. 445.

A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differs as to its

application violates the first essential of due process of law. *Cramp v. Board of Public Instruction*, 368 U. S. 278, 7 L. Ed. 2d 285; *U. S. v. Spector*, 96 L. Ed. 863; *U. S. v. Petrillo*, 332 U.S.1, 91 L. Ed. 1877; *U. S. v. Darby*, 317 U.S. 100, 85 L. Ed. 609; *Pearson v. Probate Court*, 309 U.S. 270, 84 L. Ed. 744; *Kay v. U. S.*, 303 U.S. 1, 82 L. Ed. 607.

A statute must convey sufficiently definite warning as to the prescribed conduct when measured by common understanding and practice. *Roth v. U. S.*, 354 U.S. 476, 1 L. Ed. 2d 1498. The constitutional vice in vague, indefinite statutes is in injustice to the accused in placing him on trial for an offense of whose nature he was given no fair warning. *C. I. O. v. Douds*, 339 U.S. 382, 94 L. Ed. 925.

Such a State statute when applied in the Federal courts through the Assimilative Crimes Act violates the Fifth Amendment to the Constitution of the United States.

Perhaps Section 54-524.101(a) can be read as raising a presumption, to-wit: that possession of some unspecified quantity of a controlled drug is sufficient evidence of the petitioner's guilt of possessing the controlled drug with the intent to distribute it. But note that the provision as written authorizes a conviction for manufacturing and actual distribution as well based solely on the quantity of the drug possessed.

Such a presumption is irrational in that the judge or jury may presume either manufacture, or distribution or possession with intent to distribute from the base fact of possession of a drug. Likewise, the fact finder could presume the defendant was guilty of all three, manufacturing, distributing, and possessing, with intent to distribute from the single fact of possession.

> "A criminal statutory presumption must be regarded as 'irrational' or 'arbitrary' and hence, unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is ***more likely than not*** to flow from the proved fact on which it is made to depend." ***Leary v. United States***, 395 U.S. 6, 36; 23 L. Ed. 2d 57, 82; 89 S. Ct. 1532. (emphasis supplied)

With respect to quantity, does possession of two "joints" of marijuana activate the presumption on the theory that the petitioner, able to smoke only one at a time, intends the second for someone else? Does possession of a dozen or two dozen or more marijuana cigarettes ever raise the presumption that the petitioner manufactured them? Or is distributing them? If possession of "a large amount" triggers the presumption, what is "a large amount"?

In determining whether the presumed fact is likely to flow from the proved fact "significant weight should be accorded the capacity of the" legislature "to amass the stuff of actual experience and cull conclusions from it." ***United States v. Gainey***, 380 U.S. 63, 67, 13 L. Ed. 2d 658, 662, 85 S. Ct. 754 (1965). And in *Leary v. United States*, *supra*, 395 U.S. at 39, 23 L. Ed. 2d at 83, the court placed heavy reliance on "extensive hearings before House and Senate Committees" in determining that Congress had made factual inquiry into the rationality of the presumption therein.

In the instant case, the presumptions in Section 54-524.101 (a) had no such legislative underpinnings. In Virginia House Document No. 27, (1970), a committee consisting of members of the Virginia General Assembly proposed to the Governor of Virginia that a model drug control act be adopted at the 1970 Session of the General

Assembly. The Committee's recommendations, in pertinent part, proposed a Section 54-524.101 (a) identical to the subsequently enacted version except that the clause providing:

> "A conviction for a violation of this § 54-524.101 (a) may be based solely upon evidence as to the quantity of any controlled drug or drugs unlawfully possessed."

was not included.

The House Bill No. 271, embodying the Committee's recommendations was introduced and referred to the House Committee on General Laws. Hearings were held and the Bill, with § 54-524.101 (a) intact as proposed, was reported out with amendments. The Bill passed the House with further amendments and was sent to the Senate with §54-524.101 (a) intact as proposed. It was referred to the Committee on General Laws, and was subsequently reported to the Senate.

The Bill did not reach the Senate Floor until shortly before adjournment. Thereupon, the Senate agreed to an amendment proposed by Senator Brault that § 54-524.-101 (a) be amended by adding the clause, above cited, authorizing a conviction for manufacture, distribution or possession with intent to distribute based solely upon evidence as to the quantity of drug possessed.

The clause had no historical antecedents in legislative fact finding and no where appears in the drug control acts of any state or the Federal Government. It admittedly was designed to facilitate the prosecution of drug cases by dispensing with the requirement that manufacture and distribution be proved by direct evidence, and authorized a conviction based upon one piece of circumstantial evidence, possession of "X" quantity of a controlled drug.

If the statute does not raise a presumption, but only an inference, the difference is slight. A statutory inference cannot be sustained insofar as it authorizes an inference of dispensing or distributing a controlled drug from the bare fact of possession. Such evidence is far short of sufficient to authorize a conviction for either of these acts. *Turner v. United States*, 396 U.S. 398, 421, 24 L. Ed. 2d 610, 626, 90 S. Ct. 642. cf. *Tot v. United States*, 319 U.S. 463, 87 L. Ed. 1519, 63 S. Ct. 1241 (1943); *United States v. Romano*, 382 U.S. 136, 15 L. Ed. 2d 210, 86 S. Ct. 279 (1965).

In any criminal offense involving a specific intent, the specific intent is an element of the offense to be proved by the Government beyond a reasonable doubt.

While intent as an element of the offense may be inferred from established facts, that is to say proved by circumstantial evidence, that is not to say that the Legislature may specify that a single circumstantial fact is sufficient to authorize a conviction. To do so is to permit the Legislature to invade the province of the judge and jury, rather then permitting the finder of fact free access to all of the evidence.

The statute in question otherwise makes the specific intent of the accused to distribute a vital and specific element of the offense charged.

> "When a statute makes an offense to consist of an act combined with a particular intent, that intent is just as necessary to be proved as the act itself, and *must* be found as a matter of *fact* before a conviction can be had; and no intent in law or mere legal presumption, differing from the intent in fact, can be allowed to supply the place of the latter." *Thacker v. Commonwealth*, 134 Va. 767, 114 S. E. 504.

"Undoubtedly a presumption which can be used to produce convictions without the necessity of proving a crucial element of the crime charged—and a sometime difficult-to-prove element at that—is a boon to prosecutors and an incongruous snare for defendants in a country that claims to require proof of guilt beyond a reasonable doubt." *U. S. v. Gainey*, Black, J, dissenting, 380 U.S. 63, 13 L. Ed. 2d 658.

Section 54-524.101 (a) violates the defendant's Fifth Amendment privilege against self incrimination because it coerces her to admit her guilt of possession so as to rebut the presumption that her possession established manufacture, distribution or possession with the intent to distribute.

Section 54-524.101 (c) of the 1950 Code of Virginia, as amended, makes it a crime to possess a controlled drug. When possession of that controlled drug is marijuana, the bare possession itself is a misdemeanor. The legislature then added a statutory provision which in effect states that "X" quantity of marijuana unlawfully possessed raises the misdemeanor to the status of a felony at some undefined point. The jury is given no standards or guidance as to what quantity is sufficient to authorize a felony conviction.

The defendant who would otherwise be charged with the misdemeanor of possessing marijuana must therefore take the stand and admit her guilt to possession so to enable herself to explain away the presumption of her intent if the quantity exceeds some unknown amount.

Mr.Justice McReynolds in the dissent in *Casey v. United States*, 276 U.S. 413, 420 (1928) considered the use of presumptions in criminal cases:

> "Once the thumb screw and the following confession made conviction easy; but that method was crude and, I suppose, now would be declared unlawful upon some ground. Hereafter, presumption is to lighten the burden of the prosecution. The victim will be spared the trouble of confessing and will go to his cell without mutilation or disgusting outcry."

A Petition for a Writ of Error is currently pending before the Virginia Supreme Court of Appeals chalienging the validity of this Section, ***Dennis Joe Sharp v. Commonwealth***. Additionally, in an opinion authored by the Honorable Wiley R. Wright, Jr., Judge, Corporation Court for the City of Alexandria, Virginia, on the 17th day of May, 1971, he said that this

> "language 'as to quantity' is so uncertain and indefinite as to be incapable of application by the trier of fact. This being the case, it violates the Due Process Clauses of the Fourteenth Amendment and of the Virginia Constitution, and the Court need not reach the question of whether or not there is a rational connection between the fact to be proven and the fact to be presumed." ***Commonwealth v. Patrick Martin Kelly***, Criminal Number F995, opinion letter of May 17, 1971, page 3.

The Virginia General Assembly at its 1972 Session repealed the offensive provision and rewrote § 54-524.101 as § 54-524.101:1. Your petitioner may be the only person ever tried in the Federal System under such a burden.

CONCLUSION

For the aforegoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Philip J. Hirschkop
PHILIP J. HIRSCHKOP

Robert T. Hall
ROBERT T. HALL
Counsel for Petitioner

August 12, 1972

CERTIFICATE

I hereby certify that on the 12th day of August, 1972, I mailed, postage prepaid, a copy of the foregoing petition for writ of certiorari to the Solicitor General, Department of Justice, Constitution Avenue between 9th & 10th Streets, Washington, D. C. 20530, and to James J. Tansey, Esquire, Department of Justice, Washington, D. C. 20530.

Robert T. Hall
ROBERT T. HALL

STATE OF VIRGINIA,
COUNTY OF FAIRFAX, to-wit:

The foregoing certificate was subscribed and sworn to before me this 12th day of August, 1972.

/s/ Joan Marie Smith
Notary Public

My commission expires:
March 18, 1973

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

NO. 71-1629

UNITED STATES OF AMERICA,
Appellee,

v.

HARRIOTT H. CHILDS,
Appellant.

On Appeal from the United States District Court For the Eastern District of Virginia, at Alexandria Oren R. Lewis, District Judge

Argued May 11, 1972.

Decided July 13, 1972.

Before CRAVEN and RUSSELL, Circuit Judges, and BLATT, District Judge.

Robert T. Hall for Appellant, and James J. Tansey, Attorney, Department of Justice (Brian P. Gettings, United States Attorney, on brief) for Appellee.

RUSSELL, Circuit Judge

The defendant was convicted under the Assimilative Crime Act[1] of knowing possession of marihuana with intent to distribute, in violation of Section 54-424.101 (a) of the Code of Virginia (1950), as amended. The marihuana, carefully packed in a trunk in the form of bricks weighing about a half pound each, was shipped by airline from Los Angeles, California, to Washington National Airport in Arlington County, Virginia. After receipt of the trunk for shipment, the Air Freight supervisor in Los Angeles for some reason, not explained in the record on appeal, became suspicious and had the trunk opened. Inside, under a layer of mothballs, were discovered sixteen (16) marihuana bricks. The federal narcotic officers were advised of the discovery and, apparently with the approval of such officers, the shipment was forwarded to its destination to the Washington National Airport. The trunk was addressed to "Pamela Feldman". When the shipment arrived at the Washington National Airport, the defendant presented the airline with the claim bill for the trunk, and, after signing "Pamela Feldman" to the receipt therefor, was given possession of the trunk. When the trunk was placed in defendant's car, the officers, alerted by the information received from Los Angeles, arrested her and prosecution followed. Convicted, the defendant has appealed contending that the District Court erred (1) in not finding the statute under which she was convicted unconstitutional, (2) in not granting her motion for an acquittal on grounds of insufficiency of evidence, and finally (3) in the instructions given the jury on the proof necessary to establish the element of intent to distribute.

---

[1] 18 U.S.C. 13.

It is not necessary to tarry long on the defendant's claim of invalidity of the statute under which she was indicted and convicted. She does not and could not assail for vagueness the substantive provision of Virginia statute which made it an offense to possess marihuana with intent to distribute. After establishing and defining the offense itself, the statute concluded with the following subsidiary provision on sufficiency of evidence:

> "A conviction for a violation of this § 54-524.101 (a) may be based solely upon evidence as to the quantity of any controlled drug or drugs unlawfully possessed."

It is this subsidiary provision on sufficiency of evidence against which the defendant directs her claim of unconstitutionality. The mere fact, however, that this subsidiary provision may be invalid for vagueness, as defendant contends (a conclusion on which we venture no opinion), would not render the earlier substantive section creating the crime itself unconstitutional.[2] The relevance of the subsidiary provision would attach merely to the issue whether the evidence adduced by the prosecution was sufficient to permit submission to the jury and to the correctness of the Court's jury instructions on what proof was required to support a finding of intent to distribute. We shall accordingly address ourselves to those issues.

The contention that her motion for acquittal should have been granted because of insufficiency of proof of intent to distribute is palpably without merit. Intent is not susceptible of direct proof;[3] it must be proved by circumstances. The circumstances establishing such intent in a narcotic prosecution may properly consist of the quantity

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[2] **United States v. Jackson** (1968) 390 U.S. 570, 572-591, 88 S. Ct. 1209, 20 L. Ed. 2d 138.

[3] 21 Am Jur. 2d p. 164, §82.

of the product involved, the nature of its packaging, and other relevant facts. The circumstances in this case, including the quantity, method of packaging, false name of addressee, and other facts, were more than sufficient to justify the submission of the issue of intent to distribute to the jury. People do not normally order a thirty-pound trunk load of marihuana for personal use, especially when packaged as this shipment was.

The final contention of the defendant relates to the Court's charge on the element of intent to distribute. While in the introduction of his charge, the District Judge read the statute under which the defendant was indicted, including the subsidiary provision on the sufficiency of proof, this was merely preparatory to his specific charge and he did not, in the substantive part of his instructions setting forth the specific elements of the crime and the proof required to establish these separate elements, instruct the jury that intent to distribute might be presumed "*solely*" from the quantity of the marihuana possessed. As he stated in denying a motion for a new trial, he went quite "a step further" and instructed the jury that intent to distribute might be inferred "from the possession of a large quantity of marihuana, *among others and all other facts and circumstances in this case* that you may, *as I am telling you, you are not required to infer from all this relevant evidence that she intended to distribute it.*" (Italics added) He concluded this phase of his instructions with the statement that "the intention to sell (distribute) can be inferred from the amount in question and from all the other relevant circumstances in this case." As is thus seen, the Court did not rest his instruction on the sufficiency of proof of intent to distribute on the statutory standard, i.e., "solely upon evidence of the quantity":

In essence his instruction employed the standard of proof of intent normally to be applied in the absence of any statutorily authorized inference. In so instructing the jury, the Court was actually following the implicit ruling in *Turner v. United States*,(1969) 396 U.S. 398, the authority on which defendant relies. In concurring with the conviction on a count charging distribution in that case, Justice Marshall stated that "evidence of possession of 275 glassine bags of heroin proved beyond a reasonable doubt that Turner was distributing heroin in violation of 26 U.S.C. sec. 4704(a)." 396 U.S. at p. 424. Since the Court's questioned instruction on intent was not restricted to the statutory provision, the constitutionality of which the defendant assails but, on the contrary, conformed to what the legal rule of sufficiency of proof was, apart from any statutorily provided inferences, it is unnecessary to consider or pass on the constitutionality of the statutory standard of sufficiency of proof.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA

v.

HARRIOTT H. CHILDS
a/k/a
Pamela Feldman

} Criminal No.

MARCH 1971 TERM - At Alexandria

THE GRAND JURY CHARGES:

That on or about January 31, 1971 at Washington National Airport, Arlington, Virginia, within the special maritime and territorial jurisdiction of the United States and in the Eastern District of Virginia, HARRIOTT H. CHILDS, a/k/a Pamela Feldman, did willfully, knowingly and unlawfully possess approximately 40 pounds of the controlled drug, marihuana, with intent to distribute the said marihuana.

(violation of Title 18, United States Code 13, Sections 54-542.101 and 54-524.80(c)(7), Code of Virginia, 1950 as amended).

A TRUE BILL:

.....
Foreman

.....
Brian P. Gettings
United States Attorney

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA

v.

HARRIOTT H. CHILDS,
a/k/a Pamela Feldman

} Criminal No. 78-71-A

BEFORE
HONORABLE OREN R. LEWIS
United States District Judge

AND A JURY

May 10, 1971

APPEARANCES:

James Tansey, Esquire, and
Gilbert K. Davis, Esquire
Assistant United States Attorneys

For the United States of America,

Ira M. Lowe, Esquire,
William Farnsworth, Esquire,
David M. Basker, Esquire, and
Gary D. Weinstein, Esquire

For the Defendant.

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Now, this charge is based upon a section of the Virginia Code. Specifically it's predicated on Section 54-524.101 of the Virginia Code. It is based on the Virginia Code because it is applicable in a federal court under what we call the Assimilated Crimes Act.

Although the alleged crime occurred on a federal reservation, to wit, National Airport, which is federal in this case, Virginia law is applicable. The airport is in Virginia. So you shall accept that as the law.

The law in question is very short. The pertinent portion of that section, Chapter 54 of the Virginia Code, pertains to the possession and distribution and manufacture, and so forth, of various and sundry types of drugs, and it says who can possess them and manufacture them and control them, and it includes all kinds of drugs. There are many of them specified under certain conditions, this statute provides that certain doctors, pharmacists and other official persons for official purposes are entitled to have certain types of drugs under certain conditions specifically set forth.

This young lady is charged with violating 54-542.101 (a), which reads except as authorized by this chapter, and the Court tells you as a matter of law her category does not fall in any category that is claimed, such as a pharmacist, doctor or an included person, so, therefore, it shall be unlawful for any person knowingly or intentionally (1) to possess with intent, to distribute a controlled drug.

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The controlled drug referred to is the one identified among many of them in this statute—marihuana is a controlled drug.

The Court tells you that as a matter of law it is so specified in the law of Virginia.

Therefore, the statute reads for this case it is except as authorized by this chapter, it shall be unlawful for any person knowingly or intentionally to possess with intent to distribute marihuana.

The statute further reads that a conviction for violation of this section may be based solely upon the evidence as to the quantity of the marijuana unlawfully possessed.

You must go further, however, in order to convict. You must be satisfied beyond a reasonable doubt that this

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defendant did the act knowingly or intentionally, that is, that she knowingly possessed this trunk and that in the knowing possession of it that she knew what was in the trunk, and she knew it contained marihuana, and the Government must satisfy you of that fact, because it is from the possession, it is from the possession of marihuana, it is from the possession of a large quantity of marihuana,

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among others and all other facts and circumstances in this case that you may, but as I am telling you, you are not required to infer from all of this relevant evidence, that she intended to distribute it. In other words, the Government doesn't have to prove an actual sale of the drug but they do have to prove that she possessed it with such an intention and that the intention to sell can be inferred from the amount in question and from all the other relevant circumstances in this case.